

TESTIMONY OF MARK MUSI
CHIEF COMPLIANCE AND ETHICS OFFICER
BNY MELLON
BEFORE THE CONGRESSIONAL OVERSIGHT PANEL
SEPTEMBER 22, 2010

Mr. Silvers and Members of the Panel, thank you for the opportunity to appear before you today. My name is Mark Musi and I am the Chief Compliance and Ethics Officer for BNY Mellon.

You have requested that BNY Mellon testify concerning its role as a Financial Agent of the U. S. Department of the Treasury (“Treasury”) in connection with Treasury’s administration of the Troubled Asset Relief Program or TARP. In particular, we understand that the Panel would like us to address compliance policies, procedures and practices with respect to conflicts of interest and confidentiality stemming from BNY Mellon’s role as Financial Agent for Treasury under TARP. I am happy to address these issues. BNY Mellon was selected as Financial Agent for TARP by Treasury in October 2008, very shortly after enactment of the Emergency Economic Stabilization Act of 2008. From the outset, BNY Mellon has been highly sensitive to the demands of our role as a Financial Agent for Treasury and the corresponding importance of having robust policies, practices and procedures in place to address conflicts of interest and confidentiality concerns.

Given our long history of servicing the government in various capacities, and the need for a culture of compliance in serving as agent and trustee for public and private entities, the

conflicts of interest and confidentiality policies, procedures and enforcement mechanisms that we have applied in our role as Financial Agent in the TARP program were not new to our way of doing business. Because our principal business is moving, holding, and administering assets for customers, the types of conflicts that arise with firms that have substantial mergers and acquisition and underwriting activities are not present in our company.

A comprehensive statement of our policies, procedures, controls and mitigation plan are incorporated in the Financial Agency Agreement for Custodian, Accounting, Auction Management and Other Infrastructure Services. This agreement, known as the FAA, and executed by Treasury and BNY Mellon, is the master contract that governs our responsibilities and undertakings as Treasury's Financial Agent in the TARP Program.

As set forth in detail in Exhibit E of the FAA, BNY Mellon has applied stringent policies, procedures, and mitigation controls with regard to conflicts of interest and confidentiality issues. Furthermore, on a regular basis, our TARP compliance personnel interact with Treasury's TARP compliance oversight personnel to ensure that we are meeting Treasury's expectations with respect to conflicts of interest and confidentiality controls and monitoring.

I would like to first outline for the Panel the scope of our compliance and mitigation plan in the area of conflicts and confidentiality. Next, I will describe the way in which compliance oversight monitoring is performed on an ongoing basis as well as the regular interaction our TARP compliance officers have with their counterparts in Treasury.

A. Conflicts of Interest and Associated Mitigation Controls

1. Organizational Conflicts of Interest

As Financial Agent, BNY Mellon comes into possession of sensitive and material non-public information. In order to address the concern that BNY Mellon as Financial Agent not use

such information for its own advantage or to favor affiliates or its clients, in addition to our standard conflicts process to comply with applicable securities laws, rules and regulations, we developed procedures that are specific to the TARP program, including:

- Information Barrier Policies – Consistent with our company-wide policy, TARP-specific material non-public information may only be shared with those individuals who need to know the information to perform their duties under the FAA.
- Use of a Restricted Securities List – We have a TARP-specific restricted securities list. The inclusion of an issuer’s securities on this confidential list facilitates surveillance of BNY Mellon’s activities to ensure that the information barrier is maintained.
- Controls Over Electronic and Paper Files related to Non-Public Information – We implemented enhanced access controls to TARP-related electronic and paper files, which segregate and protect the confidentiality of TARP information.
- Separation of TARP-related Custodial and Infrastructure Services from Asset Management Functions – Individuals servicing TARP are physically separated from asset management personnel. And we use separate information technology systems.
- Non-Disclosure Agreements – All BNY Mellon employees and subcontractors are required to execute a non-disclosure agreement prior to accessing TARP information.

2. Personal Conflicts of Interest

To address concerns that individuals employed by BNY Mellon in connection with its operations as Financial Agent use material non-public information for their own benefit, BNY Mellon applied its existing policies, which provide the following mitigation controls:

- Quarterly Disclosure – All key individuals (as defined in 32 C.F. R. Part 31.201) personally and substantially involved in performing services under the FAA must

disclose quarterly information to our Compliance Department equivalent to the information required on the U.S. Office of Government Ethics Form 450.

- Personal Trading Restrictions – If a security is on our TARP-specific restricted securities list or investment activities in that security by key individuals or their related persons is prohibited, except where it is determined that the key individual is not in possession of material non-public information. This determination may only be made by members of our Compliance or Legal Department.

3. Additional Mitigation Controls

BNY Mellon maintains and enforces corporate-wide policies and procedures that address the following relevant general conflicts of interest mitigation controls.

- Code of Conduct – All employees working on the FAA are required to annually attest to compliance with BNY Mellon’s Code of Conduct. In addition, all management employees and others deemed to be in sensitive positions must complete a comprehensive questionnaire designed to identify potential conflicts of interest.
- Training – Employees servicing TARP receive compliance training related to their obligations under the FAA, in addition to their other comprehensive compliance training.
- Monitoring/Compliance – Compliance and business control units regularly test compliance with the various provisions of the FAA.
- Incident Reporting – Employees servicing the FAA are required to promptly report any suspected or known breach of any provision of the FAA, including breaches of the conflicts of interest or confidentiality.

- Restrictions on Gifts and Entertainment Policy – All employees have strict limitations on their acceptance or giving of gifts and entertainment, which are monitored and managed by our Compliance Department.
- Limitations on Communications with Employees of the Treasury – Under the FAA, BNY Mellon does not make any direct or indirect offers of employment or business opportunity to Treasury employees.
- Use of Subcontractors to Support the FAA –BNY Mellon works with its subcontractors and Treasury to assess potential conflicts of interest and receives conflicts of interest certifications from each subcontractor quarterly.

4. Certifications

Quarterly and annually, BNY Mellon as Financial Agent and its subcontractors performing work under the FAA certify compliance with policies governing organizational and personal conflicts of interest, communication with Treasury employees, and confidentiality.

5. Additional Obligations and Controls

- BNY Mellon has a continuing obligation to report any known potential organizational or personal conflicts of interest no later than five business days after discovery.
- In addition to our obligation to disclose to Treasury any conflicts or confidentiality issues, BNY Mellon discloses to Treasury other matters concerning its services as Financial Agent, as required by the FAA.
- Pursuant to the FAA, BNY Mellon's Human Resources Department, working with our TARP business managers, determines that employees servicing TARP and those of its subcontractors are United States citizens or lawful permanent residents.

B. Interaction with Treasury Compliance Personnel

Since the inception of the program in October of 2008, both our business and compliance personnel have had routine, ongoing discussions with Treasury related to BNY Mellon's performance under the FAA. In particular, our compliance personnel are in frequent communications with compliance professionals at Treasury to ensure that we are transparent and fully understand the expectations related to conflicts and confidentiality. We have considered those conversations a vital and important part of fulfilling our obligations as the Financial Agent for TARP.

Conclusion

In conclusion, our TARP compliance program is comprehensive and robust and is working as planned. We have a professional and productive working relationship with our client, the Treasury, and its compliance professionals.

We are proud of our role as Financial Agent for Treasury in this important undertaking, and we look forward to continuing to assist our Government in this program.

Thank you again for giving BNY Mellon the opportunity to appear before you today.